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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–HQ–ES–2014–N257]**

**[FXHC11220900000–145–FF09E33000]**

**Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Land-Based Wind Energy Guidelines**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on December 31, 2014. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

**DATES:** You must submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395–5806 (fax) or [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish

and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803 (mail), or hope\_grey@fws.gov (email). Please include "1018-0148" in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Hope Grey at hope\_grey@fws.gov (email) or 703-358-2482 (telephone). You may review the ICR online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB.

**SUPPLEMENTARY INFORMATION:**

**Information Collection Request**

*OMB Control Number:* 1018-0148.

*Title:* Land-Based Wind Energy Guidelines.

*Service Form Number:* None.

*Type of Request:* Extension of a currently approved collection.

*Description of Respondents:* Developers and operators of wind energy facilities.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* On occasion.

ACTIVITY (Reporting and recordkeeping)	NUMBER OF RESPONDENTS	NUMBER OF RESPONSES	COMPLETION TIME PER RESPONSE (HOURS)	TOTAL ANNUAL BURDEN HOURS	NONHOUR BURDEN COST PER RESPONSE	TOTAL ANNUAL NONHOUR BURDEN COST
Tier 1 (Desktop Analysis)	40	40	81	3,240	\$825	\$33,000
Tier 2 (Site Characterization)	35	35	369	12,915	\$3,750	\$131,250
Tier 3 (Pre- construction studies)	30	30	14,695	440,850	\$149,288	\$4,478,640
Tier 4 (Post- construction fatality monitoring and	45	45	4,023	181,035	\$40,875	\$1,839,375

habitat studies)						
Tier 5 (Other post-construction studies	10	10	6,939	69,390	\$70,500	\$705,000
<b>TOTALS</b>	160	160		707,430		\$7,187,265

*Estimated Annual Nonhour Burden Cost: \$7,187,265.* Costs will depend on the size and complexity of issues associated with each project. These expenses may include, but are not limited to: Travel expenses for site visits, studies conducted, and meetings with the Service and other Federal and State agencies; training in survey methodologies; data management; special transportation, such as all-terrain vehicle or helicopter; equipment needed for acoustic, telemetry, or radar monitoring, and carcass storage. The Tier 3 estimate is very high because it includes every type of pre-construction monitoring study that could potentially be conducted. It is more likely that a selection of these studies will be performed at any given site, depending on the species of concern identified and other site-specific conditions.

*Abstract:* As wind energy production increased, both developers and wildlife agencies recognized the need for a system to evaluate and address the potential negative impacts of wind energy projects on species of concern. We issued voluntary Land-Based Wind Energy Guidelines (<http://www.fws.gov/windenergy>) in March 2012 to provide a structured, scientific process for addressing wildlife conservation concerns at all stages of land-based wind energy development. The Guidelines also promote effective communication among wind energy developers and Federal, State, tribal, and local conservation agencies. When used in concert with appropriate regulatory tools, the Guidelines are the best practical approach for conserving species of concern. We are asking OMB to renew approval for the

information collection requirements in the Guidelines. We are not making any changes to the requirements.

The Guidelines discuss various risks to species of concern from wind energy projects, including collisions with wind turbines and associated infrastructure; loss and degradation of habitat from turbines and infrastructure; fragmentation of large habitat blocks into smaller segments that may not support sensitive species; displacement and behavioral changes; and indirect effects, such as increased predator populations or introduction of invasive plants. The Guidelines assist developers in identifying species of concern that may potentially be affected by proposed projects, including, but not limited to:

- Migratory birds;
- Bats;
- Bald and golden eagles and other birds of prey;
- Prairie chickens and sage grouse; and
- Listed, proposed, or candidate endangered and threatened species.

The Guidelines follow a tiered approach. The wind energy developer begins at Tier 1 or Tier 2, which entails gathering existing data to help identify any potential risks to wildlife and their habitats at proposed wind energy project sites. The developer then proceeds through subsequent tiers, as appropriate, to collect information in increasing detail until the level of risk is adequately ascertained and a decision on whether or not to develop the site can be made. Many projects may not proceed beyond Tier 1 or 2, when developers become aware of potential barriers,

including high risks to wildlife. Developers would only have an interest in adhering to the Guidelines for those projects that proceed beyond Tier 1 or 2.

At each tier, wind energy developers and operators should retain documentation to provide to the Service. Such documentation may include copies of correspondence with the Service, results of pre- and post-construction studies conducted at project sites, bird and bat conservation strategies, or any other record that supports a developer's adherence to the Guidelines. The extent of the documentation will depend on the conditions of the site being developed. Sites with greater risk of impacts to wildlife and habitats will likely involve more extensive communication with the Service and longer durations of pre- and post-construction studies than sites with little risk.

Distributed or community-scale wind energy projects are unlikely to have significant adverse impacts to wildlife and their habitats. The Guidelines recommend that developers of these small-scale projects do the desktop analysis described in Tier 1 or Tier 2 using publicly available information to determine whether they should communicate with the Service. Since such project designs usually include a single turbine associated with existing development, conducting a Tier 1 or Tier 2 analysis for distributed or community-scale wind energy projects should incur limited nonhour burden costs. For such projects, if there is no potential risk identified, a developer will have no need to communicate with the Service regarding the project or to conduct studies described in Tiers 3, 4, and 5.

Adherence to the Guidelines is voluntary. Following the Guidelines does not relieve any individual, company, or agency of the responsibility to comply with

applicable laws and regulations. Developers of wind energy projects have a responsibility to comply with all applicable laws and regulations, including the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and the Endangered Species Act.

### **Comments Received and Our Responses**

*Comments:* On July 3, 2014, we published in the **Federal Register** (79 FR 38055) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on September 2, 2014. We received comments from the wind energy industry, a State agency, an environmental consulting firm, an environmental nongovernmental organization (NGO), and an independent consultant to the environmental NGO community. The comments are sorted below by relevance to the questions posed in the July 3, 2014, notice, followed by our responses. We invited comments concerning this information collection on:

***Whether or not the collection of information is necessary, including whether or not the information will have practical utility.***

Commenters felt that the collection of information was necessary and that the information has practical utility. We did not receive any comments to the contrary. It was noted that the necessity and utility of information collected are dependent upon whether information has previously been collected in the study area. We agree that existing information should be used, where available. The Guidelines encourage use of credible, publicly available information including published studies, technical reports, databases, and information from agencies, local conservation organizations,

and/or local experts. Another commenter noted that any proposal to conduct a study should define the questions that are expected to be answered, because studies are sometimes proposed without regard for whether the information learned will contribute to useful project evaluation. We agree that information should not be collected for the sake of collecting information. To accomplish this, the Guidelines pose questions within each Tier to help developers and Service staff identify data needs and any necessary surveys or studies.

***The accuracy of our estimate of the burden for this collection of information.***

One commenter noted that the estimate of 50 responses and respondents annually submitting information related to Tier 4 seems low considering that the Guidelines are intended to apply not only to projects initiated after publication of the Guidelines, but also to projects that were already in development and already operating. Another commenter provided a revised estimated burden calculated by members of the wind energy industry community. We used the industry's figures in revising the estimate of the burden, and also agreed with the comment that the number of respondents in Tier 4 should be higher to reflect ongoing fatality studies at existing facilities. In addition, we revised the total number of respondents and responses based on the number of wind energy projects the Service reviewed in fiscal year 2013. These changes are reflected in the table above. We have decreased our estimates for the total number of respondents. Although Tier 4 responses have increased in proportion to the total number of respondents, the number reflected in the table above is less than what we provided in our previous request to OMB.

A third commenter noted that the burden estimates are dependent upon the size of the project, complexity of the issues, and experience and equipment needs of the consultant, as well as previous information available for the site. We agree that the factors listed all affect estimates of project costs.

***Ways to enhance the quality, utility, and clarity of the information to be collected.***

Regarding the quality of the data, several commenters felt that there should be a standardized methodology for collection of pre- and post-construction data. We agree that standardized methodologies are ideal. The Guidelines encourage the use of common methods and metrics. Such standardization allows for comparisons among projects and provides some certainty regarding what will be asked of a developer for specific projects. However, because of the need for flexibility in application, the Guidelines do not make specific recommendations on protocol elements for pre- and post-construction studies. The Service's wind energy website and the Guidelines direct developers to tools and resources that have been developed and compiled through collaborative efforts and partnerships between Federal, State, and tribal agencies; wind energy developers; and NGOs interested in wind energy–wildlife interactions.

We received comments on specific survey methodologies and study design considerations, which detailed the manner in which studies should be designed, executed, and evaluated, and provided analysis of the usefulness and efficacy of certain pre- and post-construction survey methods. As noted, the Guidelines do not recommend certain methods over others, and instead point users to methods



generally accepted by the wind-wildlife community as scientifically valid with an aim towards greater consistency.

One commenter suggested that in addition to standardized data collection, post-construction fatality monitoring should also be automated using new and emerging technologies, and that these automated systems should be required as conditions of receiving incidental take permits under the Endangered Species Act or Bald and Golden Eagle Protection Act. This suggestion extends beyond the purview of the Guidelines in terms of permitting requirements. In addition, we do not have sufficient information about these systems at this time to evaluate their efficacy. If such technologies become a reality, their use, along with a suite of other existing tools, could potentially improve estimates of strike-related fatalities at wind energy facilities.

Regarding the utility of the data, one commenter questioned whether the use of voluntary guidelines is effective due to a lack of use by public and private entities. The commenter referenced a map that shows that wind energy facilities have been, and continue to be, developed in areas of high risk to migratory birds, contrary to the purpose of the Guidelines to guide development away from areas of highest risk to more suitable areas. We are currently in the process of evaluating the efficacy and use of the Guidelines, and the Service is considering regulatory options. Based on feedback from the wind energy industry, and from Service staff, the Guidelines are often successful in improving communication and lead to development of wind projects that are safer for wildlife, but in other cases are not successful in preventing wind energy facilities from being constructed in areas of high risk to wildlife.

Regarding clarity, several commenters indicated the need for greater transparency in pre- and post-construction monitoring results, study design and protocol, and adaptive management plans. Several reasons were given regarding the need for greater transparency, including facilitating study replication and consistency, allowing public evaluation of the effectiveness of the Guidelines, improved quality of information collected, and the need for greater public oversight generally. It was noted that often these data are treated as proprietary information, or are considered as “confidential business information” and are withheld from requests made via the Freedom of Information Act. While we agree that the public availability of data would facilitate greater oversight, improved consistency and comparability in study design and results, and improved landscape-level and cumulative effects analyses, we do not have the authority to require companies to share data that they own. Often, we receive reports that contain an analysis of data collected, and not the raw data itself. The information that is provided to us will continue to be evaluated on a case-by-case basis when it is requested via the Freedom of Information Act. We are developing tools that would allow companies to transmit fatality monitoring data via an online system that would provide anonymity, but still make the data available. We will continue to pursue other means of increasing the transparency of information related to study methodology and fatality data.

***Ways to minimize the burden of the collection of information on respondents.***

One commenter felt that the burden of adhering to the Guidelines is adequately compensated for by the discretion that will be exercised by the Office of Law Enforcement should violations of the Migratory Bird Treaty Act (MBTA) or Bald and

Golden Eagle Protection Act (BGEPA) occur. This comment has been noted, although it does not provide suggestions for ways to further minimize the burden of the information collection. We also received a comment suggesting burdens could be minimized through use of “desktop tools” or existing publicly available information online in Tiers 1 and 2, and by siting projects in areas with minimal risk to rare, threatened, and endangered species. We agree with the commenter that use of existing information reduces the burden on respondents. The Guidelines encourage use of credible, publicly available information, including published studies, technical reports, databases, and information from agencies, local conservation organizations, and/or local experts. We also agree that burdens are reduced by siting projects in areas with least risk to wildlife and their habitats, and note that this is exactly what we hope to accomplish by working with developers to implement the Guidelines.

***Other comments***

Several other comments were provided that were not pertinent to the questions asked in the notice. These comments addressed regulatory tools for migratory bird conservation, BGEPA programmatic permits for incidental take of eagles, suggestions for what types of mitigation methods should be acceptable as compensation for loss of protected species, enforcement actions by the Office of Law Enforcement against wind facilities compared with other energy technologies, splitting environmental study responsibilities among separate consultants, and stakeholder involvement in the development of adaptive management plans. One commenter also noted that the Service did not estimate the burden on the public to access the information collected via Freedom of Information Act requests,

administrative appeals, and lawsuits. The Paperwork Reduction Act requires that we analyze the burden placed on those who submit information to us, not on the burden of others attempting to access that information.

### **Request for Public Comments**

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold

your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 23, 2014

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